

a. Paragraph 80106 is deleted in its entirety and is replaced as follows:

“80106 Offset Costs DFARS 225.7303-2(a)(3) allows US contractors to recover, under FMS contracts based on LOAs financed wholly by Purchaser cash or repayable FMF credits, costs of any offsets which are associated with those contracts. USG agencies may not enter into or commit US firms to any offset agreement. Any Purchaser requesting offset arrangements in conjunction with FMS should be informed that the responsibility for negotiating offset arrangements and satisfying all related commitments resides with the US firm involved. It is the responsibility of the implementing agency to specify to DSCA, in the transmittal of any Congressional Notification, LOA and any subsequent LOA modification or amendment, that offset costs have been included, if known. Information regarding offset costs and their recoupment through FMS follows:

A. Offset costs should be included as part of the line item(s) unit cost in P&A data and in estimated prices quoted in the LOAs.

B. For procurements where adequate price competition exists or it is anticipated, whether conducted by the Purchaser or by the USG, the USG will normally not have visibility as to whether offset costs are included in the price or the amount of such costs.

C. When the USG anticipates a noncompetitive procurement, it is the contractor's responsibility to inform the implementing agency when estimated offset costs have been included in the FMS pricing information provided. The costs should be included as early as possible but before submittal of the LOA. Requests to include these costs after LOA acceptance will require an LOA modification or amendment.

D. It is inappropriate for USG personnel to discuss with the Purchaser the nature or details of an offset arrangement. However, if known, the fact that offset costs have been included in the P&A or LOA price estimate will be confirmed should the Purchaser inquire. The Purchaser should be directed to the US contractor for answers to all questions regarding its offset arrangement, including questions dealing with cost. Implementing agency involvement in any discussion of offset costs (beyond confirmation of the inclusion of these costs in price estimates) with the Purchaser requires case-by-case review and approval by DSCA.

E. All LOAs will include the offset note provided in paragraph 70105.L.4.”

b. Paragraph 70105.L.4. requires the inclusion of an offset note on all LOAs. To ensure the customer is aware that offset costs may be included in the FMS case, this paragraph/note is revised to read as follows:

“4. **Offset Costs**. (See paragraph 80106) All LOAs will contain the following note:

Offset costs may be included in this LOA if it is financed wholly by Purchaser cash or repayable credit. The DoD is not a party to any offset agreements/arrangements which may be required by the Purchaser in relation to the sales made in this LOA and assumes no obligation to administer or satisfy any offset requirements or bear any of the associated costs.”

This note must be included on any new LOAs written after the date of this memorandum. There is no requirement to add this revised note retroactively to any existing cases.

c. Paragraph 70302 is updated to eliminate the phrase “(if known on the date of certification submittal)” from line 26. This change makes the paragraph consistent with the changes in P.L.106-113.

d. Paragraph 70302.A.3.c. is updated to eliminate the phrase “(if known on the date of transmittal of such statement)” from line 4. Again, this makes the paragraph consistent with new legal requirements.

e. Table 703-3, “Advance Notification Data” must be updated to reflect the requirement to include offset information as part of the advance notification. Paragraph p. is relabeled “q.” and a new p. is included as follows: “p. A description of any offset agreement with respect to this sale is included in the enclosed confidential attachment (if applicable). [Note: See Table 703-3B for the proper format.]”

f. Table 703-3B is added as shown in attachment 2 of this memorandum.

g. Table 703-5, “Statutory Notification Data,” must be updated to reflect the requirement to include offset information as part of the statutory notification. Paragraph o. is relabeled “p.” and a new o. is included as follows: “o. A description of any offset agreement with respect to this sale is included in the enclosed confidential attachment (if applicable). [Note: See Table 703-5B for the proper format.]”

h. Table 703-5B is added as shown in attachment 3 of this memorandum.

The revised paragraphs and tables are effective immediately and will be included in the automated version of the SAMM found in the Defense Acquisition Deskbook. If you have any questions concerning this change, please contact Beth Baker, DSCA/PSD-PMD, (703) 604-6612, DSN 664-6612 or e-mail: beth.baker@osd.pentagon.mil.

Attachments:

1. OUSD(A&T) Memorandum, 13 Jul 99
 2. New SAMM Table 703-3B
 3. New SAMM Table 703-5B
- cc: AMSAC-OL-MP